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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/762,301

01/23/2004

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EXAMINER

HOM, SHICK C

ART UNIT

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2616

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/762,301		COUTURIER, ALBAN	
	<b>Examiner</b>		<b>Art Unit</b>	
	Shick C. Hom		2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/23/04 & amend of 11/1/05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/23/04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Drawings***

1. The drawings are objected to because a brief descriptive label must be provided for each of the labeled items in Figs. 1-4, e.g. in Fig. 1 provide descriptive label "measuring device" for label M. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office

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action. The objection to the drawings will not be held in abeyance.

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it uses legal phraseology such as "means" in lines 1, 4-5, and 7. Correction is required. See MPEP § 608.01(b).

5. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).

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- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

6. The disclosure is objected to because of the following informalities: in page 5 line 6 delete typo "objet" and insert --object---. Appropriate correction is required.

7. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

8. Claims 1-14 are objected to because of the following informalities: In claim 2-14 line 1, the words "A measuring probe" seems to refer back to the "measuring probe" recited in claim 1 line 1. If this is true, it is suggested changing "A measuring probe" to ---The measuring probe---. In claim 1 lines 5-6 and 6-7 delete "the said path" and "the said configuration data" and insert ---said path--- and ---said configuration data---, respectively. Likewise, in claims 2, 11 line 2, claims 3, 5

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lines 1-3, claims 4, 10 lines 2-3, claims 6, 7 line 1 delete "the said" and insert ---said---. Claim 7 is objected to because it contains two sentences. In claims 1, 3, 7-8, 10, and 14, delete all items enclosed in parentheses since they are not part of the claim. In claim 6 lines 1-2 which recite "said configuration base" seems to be a typo, if this the case delete "said configuration base" and insert ---said configuration data---. In claim 6 line 5, insert period at the end of the sentence. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 lines 1 and 3 which recite "the means to access data flows" and "the measurement means" respectively, lack clear antecedent basis because no means to access data flows nor measurement means have been previously recited in the claim and therefore the limitation is not clearly understood. Claims 2-14 are rejected under 35 U.S.C. 112, second paragraph because they depend from rejected claim 1.

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***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-3, 6-7, and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Palenius et al. (2002/0019231).

Regarding claims 1, 7, and 12-14:

Palenius et al. disclose a measuring probe, having the means to access data flows composed of packets, transmitted along a path formed by a multiplicity of equipment in a telecommunication network, and the measurement means to perform measurements, in accordance with configuration data, characterized in that in addition it possesses determination means employed to determine that one or more packets transmitted along said path form a signaling message, and signaling means to



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determine said configuration data from this signaling message (paragraph 0020 recite receiving measurement commands specifying the time for measurement clearly anticipate signaling message including configuration data, respectively as in claims 1, 7; Fig. 3 shows the measurement means 24, 34; and paragraph 0004 recite the measurement unit and monitor clearly reads on the measuring probes and measuring devices as in claims 12-14).

Regarding claim 2:

Palenius et al. disclose whereby said measurements are relative to said data flow (paragraph 0007 recite measurement being performed using the idle timeslots and keeping the data transmission rate constant by decreasing the spreading factor or enter a compressed mode).

Regarding claim 3:

Palenius et al. disclose whereby said measurement means are suitable for transmitting measurement reports, containing said measurements, to a measuring device determined by an identifier contained in said configuration data (paragraph 0031 recite the measurement of the channels being identified and transmitted to the control node and paragraph 0057 recite transmitting measurement reports).

Regarding claim 6:

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Palenius et al. disclose whereby said configuration data contains a set of records, each record corresponding to a measurement task and containing in particular: a filter determining the packets on which the measurements must be performed, parameters relating to the method of measurement (paragraph 0021 recite parameters for adjustment of measured quantities being provided whereby preferable or unfavorable measurement are selected by corresponding parameters clearly reads on the filter for determining measurement and parameters relating to the measurement as claimed).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 4-5, 8-9, and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palenius et al. (2002/0019231) in view of Corlett et al. (2003/0093244).

For claims 4-5, 8-9, and 10-11, Palenius et al. disclose the measuring device described in paragraph 11 of this office action. Palenius et al. disclose all the subject matter of the claimed invention with the exception of whereby said measurements are transmitted to said measuring device by means of a proxy, the data transmitted to said proxy containing said identifier as in claim 4; whereby said means of determination are suitable for reading a specific label, contained in said received message, and for determining whether said received message is a signaling message from this specific label as in claim 5; whereby the transmissions with the measuring device are made secure as in claim 8; whereby the means of making secure are transmitted by a signaling message as in claim 9; means to decide on the creation of a new measurement task by said signaling means, in particular in accordance with a sensitivity indicator associated with said measuring probe as in claim 10; and whereby the decision is also a function of a priority contained in said received message as in claim 11.

Corlett et al. from the same or similar fields of endeavor teach that it is known to provide whereby said measurements are transmitted to said measuring device by means of a proxy, the data transmitted to said proxy containing said identifier

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(paragraph 0166 recite the use of a gateway between the server and the client clearly reads on the use of a proxy means for transmitting measurements as in claim 4); whereby said means of determination are suitable for reading a specific label, contained in said received message, and for determining whether said received message is a signaling message from this specific label (paragraphs 0133-0135 recite the packet format and the measurement packet structure for determining whether said received message is a signaling message as in claim 5); whereby the transmissions with the measuring device are made secure; whereby the means of making secure are transmitted by a signaling message (paragraph 0043 recite the use of secure transfer protocol can be expanded and modified as needed as in claims 8-9); means to decide on the creation of a new measurement task by said signaling means, in particular in accordance with a sensitivity indicator associated with said measuring probe (paragraph 0038 recite creating new vectors as in claim 10); and whereby the decision is also a function of a priority contained in said received message (paragraph 0141 recite the use of priority as in claim 11).

Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide whereby said measurements are transmitted to said

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measuring device by means of a proxy, the data transmitted to said proxy containing said identifier; whereby said means of determination are suitable for reading a specific label, contained in said received message, and for determining whether said received message is a signaling message from this specific label; whereby the transmissions with the measuring device are made secure as in claim 8; whereby the means of making secure are transmitted by a signaling message; means to decide on the creation of a new measurement task by said signaling means, in particular in accordance with a sensitivity indicator associated with said measuring probe; and whereby the decision is also a function of a priority contained in said received message as taught by corlett et al. in the communications device of Palenius et al.

The measurements being transmitted to said measuring device by means of a proxy, the data transmitted to said proxy containing said identifier; whereby said means of determination are suitable for reading a specific label, contained in said received message, and for determining whether said received message is a signaling message from this specific label; whereby the transmissions with the measuring device are made secure; whereby the means of making secure are transmitted by a signaling message; means to decide on the creation of a new

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measurement task by said signaling means, in particular in accordance with a sensitivity indicator associated with said measuring probe; and whereby the decision is also a function of a priority contained in said received message can be implemented connecting the gateway; including means for determining whether said received message is a signaling message; providing secure transmissions using a signaling message; means to decide on the creation of a new measurement task by said signaling means, in particular in accordance with a sensitivity indicator associated with said measuring probe; and providing whereby the decision is also a function of a priority contained in said received message of Corlett et al. in the device of Palenius et al.

The motivation for connecting the proxy gateway; including means for determining whether said received message is a signaling message; providing secure transmissions using a signaling message; means to decide on the creation of a new measurement task by said signaling means, in particular in accordance with a sensitivity indicator associated with said measuring probe; and providing whereby the decision is also a function of a priority contained in said received message as taught by Corlett et al. in the device of Palenius et al. being that it provides the added features of a proxy gateway; secure transmissions; priority transmission; means to decide on the

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creation of a new measurement task by said signaling means; and the means for determining whether said received message is a signaling message contained in said received message provides more efficiency for the system since the system can more easily determine whether the message is a signaling message at the receiving end.

### **Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fletcher et al. disclose a method and apparatus for automatically updating software components on end systems over a network.

Muramatsu discloses a portable navigation device and system, and online navigation service in wireless communication network.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick C. Hom whose telephone number is 571-272-3173. The examiner can normally be reached on Mon-Fri.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pham Chi can be reached on 571-272-3179. The fax phone number for the organization

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where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SUPERVISORY PATENT EXAMINER 07/01/07